

AGENDA
REDEVELOPMENT COMMISSION

McCloskey Conference Room
February 1, 2016
5:00 p.m.

- I. ROLL CALL**
- II. READING OF THE MINUTES** – January 11, 2016
- III. EXAMINATION OF CLAIMS** – Acceptance of Claims Register for January 15, 2016 for \$129,923.55 and January 29, 2016 for \$2,292,977.70
- IV. EXAMINATION OF PAYROLL REGISTERS** –Acceptance of Payroll Registers for January 8, 2016 for \$42,424.69 and January 22, 2016 for \$28,485.54
- V. REPORT OF OFFICERS AND COMMITTEES**
 - A.** Director’s Report
 - B.** Legal Report
 - C.** Treasurer’s Report
 - D.** CTP Update Report
- VI. NEW BUSINESS**
 - Public Hearing**
 - A. Resolution 16-03:** Approval of CDBG Allocation Recommendations
 - End of Public Hearing**
- VII. BUSINESS/GENERAL DISCUSSION**
- VIII. ADJOURNMENT**

***THE REDEVELOPMENT COMMISSION OF THE CITY OF BLOOMINGTON, INDIANA MET on
Monday, January 11, 2016 at 5:30 p.m. in the Showers City Hall, McCloskey Room, 401 North
Morton Street, with Don Griffin, Jr. presiding***

I. ROLL CALL

Commissioners Present: David Walter, Katie Birge, Sue Sgambelluri, Jennie Vaughn, Kelly Smith and Donald Griffin, Jr.

Commissioners: None

Staff Present: Doris Sims, Director; Christina Finley, Housing Specialist

Other(s) Present: Thomas Cameron, Assistant City Attorney; Jeff Underwood, City of Bloomington Controller; Linda Williamson, Director of Economic & Sustainable Development

A. Election of Officers:

Jennie Vaughn made a motion to nominate Don Griffin, Jr for President. Katie Birge seconded the motion. The board unanimously approved.

David Walter made a motion to nominate Katie Birge as Vice-President. Sue Sgambelluri seconded the motion. The board unanimously approved.

Jennie Vaughn made a motion to nominate Sue Sgambelluri as Secretary. Katie Birge seconded the motion. The board unanimously approved.

II. READING OF THE MINUTES – Sue Sgambelluri made a motion to approve the December 22, 2015 minutes. Katie Birge seconded the motion. The board unanimously approved.

III. EXAMINATION OF CLAIMS –David Walter made a motion to approve the acceptance of the claims register for December 31, 2015 for \$32,698.06. Katie Birge seconded the motion. The board unanimously approved.

IV. REPORT OF OFFICERS AND COMMITTEES

A. Director's Report. Doris Sims was available to answer questions.

B. Legal Report. Thomas Cameron was available to answer questions.

C. Treasurer's Report. Jeff Underwood was available to answer questions.

D. CTP Update Report. Linda Williamson was available to answer questions.

VI. NEW BUSINESS

A. Resolution 16-01: Approval of the 2016 Meeting Schedule. The 2016 meeting schedule was attached to Resolution 16-01 and included in the commission packet. Sue Sgambelluri made a motion to approve Resolution 16-01. Katie Birge seconded the motion. The board unanimously approved.

B. Resolution 16-02: Approval of Doris Sims as Director. Thomas Cameron stated the Housing and Neighborhood Development Department shall be administered by the Director of Redevelopment, who is appointed by the Mayor and approved by the Redevelopment Commission. Mayor John Hamilton desires to have Doris Sims approved by the Redevelopment Commission as Director of Redevelopment.

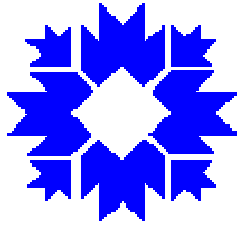
Sue Sgambelluri made a motion to approve Resolution 16-02. Jennie Vaughn seconded the motion. The board unanimously approved.

VII. BUSINESS/GENERAL DISCUSSION

Doris Sims stated the February 1, 2016 Redevelopment Commission meeting will be a public hearing.

VIII. ADJOURNMENT

The meeting adjourned at 6:00 p.m.



**CITY OF BLOOMINGTON
LEGAL DEPARTMENT
MEMORANDUM**

TO: Bloomington Redevelopment Commission

FROM: Thomas Cameron, Assistant City Attorney

RE: Uses of Tax Increments

DATE: January 28, 2016

Summary: The usage of funding generated from special taxes levied in Areas Needing Redevelopment (“Tax Increments”) is governed by Indiana statute. One permissible use of Tax Increments is for “local public improvements.” IC 36-7-14-39(b)(3). Prior to 2015, it was unclear whether this meant only the construction of improvements or whether it included maintenance of existing improvements. However, in late 2013, the Town of Munster’s Redevelopment Commission sought clarification as to whether “ongoing maintenance” was a permissible use of its funds.¹ The Lake Circuit Court (in 2014) and the Indiana Court of Appeals (in 2015) both concluded that “ongoing maintenance” was not a permissible use of the Town of Munster Redevelopment Commission’s funds. The Munster Redevelopment Commission appealed to the Indiana Supreme Court, but the Indiana Supreme Court declined to hear the case.

¹ The Court of Appeals decision ends “We further conclude that the trial court did not err in determining that Indiana statute does not permit the use of TIF funds for the continued maintenance of completed redevelopment projects.” However, the original question presented to the Trial Court focused on Indiana Code § 36-7-14-28 (a tax levy for, among other things, “the payment of all general expenses of the department of redevelopment”). A Section 28 tax levy does not result in a Tax Increment. In other words, the court did not address the original question and ruled on Tax Increments instead. Nevertheless, the Legal Department believes the City has no choice but to consider the *Munster* decision to be applicable to Tax Increments.

Tax Increments may be used for “Local Public Improvements”

Indiana Code § 36-7-14-39(b)(3) outlines how Tax Increments may be spent. The spending of Tax Increments must fit within one of the thirteen categories found in Indiana Code § 36-7-14-39(b)(3). Two categories address spending of Tax Increments on local public improvements:

- (G) Reimburse the unit for expenditures made by it for local public improvements (which include buildings, parking facilities, and other items described in [Indiana Code § 36-7-14-25.1(a)]) that are physically located in or physically connected to that allocation area.
- (J) Pay expenses incurred by the redevelopment commission for local public improvements that are in the allocation area or serving the allocation area. Public improvements include buildings, parking facilities, and other items described in [Indiana Code § 36-7-14-25.1(a)].

While Tax Increments may be spent on “local public improvements,” “local public improvement” is not given an exhaustive definition. This appears to be intentional. In 1951, the Indiana Supreme Court observed that “the definition [of local public improvement] must be left sufficiently flexible to take care of the necessities of the future.” *Dep’t of Pub. Sanitation of City of Hammond v. Solan*, 229 Ind. 228, 241 97 N.E.2d 495, 501.

To the extent that “local public improvement” is defined, it is defined generally. Indiana Code § 36-7-14-39(b)(3) provides a non-exhaustive list of examples: (1) buildings, (2) parking facilities, and (3) other items described in Indiana Code § 36-7-14-25.1(a). (Section 25.1(a) addresses the issuance of bonds, but is not particularly helpful for understanding the definition of “local public improvement.”)

Likewise, Indiana Code § 36-7-14.5-6 (which addresses redevelopment authorities, not redevelopment commissions), states that “local public improvement” means: (1) a redevelopment project; (2) a purpose of a commission under Ind. Code 36-7-14 or Ind. Code 36-7-30, or (3) a purpose of an authority under Ind. Code 36-7-14.5.

It is important to note that a local public improvement can enhance development or economic development. Thus, a project that improves or enhances an area is a local public improvement, even if the project does not directly lead to the attraction, creation, or retention of jobs. Likewise, a project that directly leads to the attraction, creation, or retention of jobs may not be a permissible use of Tax Increments.

Before the *Munster* decision, there was a thought that as long as the expenditure of Tax Increments was made for a local public improvement, it was a permissible use of Tax Increments. The *Munster* decision has clarified that Tax Increments are to be used for “the construction and installation” of local public improvements and not the continuing maintenance of a local public improvement.

Distinguishing between “Construction and Installation” of Improvements and “Continuing Maintenance”

The *Munster* decision established a distinction between the “construction and installation” of local public improvements (which are a permissible use of Tax Increments) and the “continuing maintenance” of local public improvements (which are not a permissible use of Tax Increments).

Acknowledging that in practice this bright line test may not be easy to apply, especially in the context of improving existing structures, one method of analyzing the distinction would employ a four part test that was originally used by the Indiana Tax Court in *Rotation Products Corp. v. Dep’t of State Revenue* to distinguish between “remanufacturing” and “repair.” 690 N.E.2d 795 (1998). This test could provide a workable construct to determine whether a requested project is a permissible use of Tax Increments.

Specifically, the four factor test asks:

1. What is the substantiality and complexity of the work done on the existing improvement and what are the physical changes to the existing improvement, including the addition of new parts? (Substantial and complex work and the addition of new parts are indicative of an improvement, rather than maintenance.)
2. How does the improvement’s value before and after the work compare? (An increase in value is indicative of an improvement, rather than maintenance.)
3. How favorably does the performance of the "improved" improvement compare with the performance of newly constructed improvements of its kind? (It is indicative of an improvement if the improved improvement’s performance is equal to a newly constructed improvement.)
4. Was the work performed contemplated as a normal part of the life cycle of the existing improvement? (It is indicative of maintenance if the work performed was contemplated as a normal part of the life cycle of the improvement.)

This is a balancing test; it is not necessary that all four factors be indicative of an improvement for the contemplated project to be an improvement. Instead, one must look at the four factors collectively.

The Role of Accounting Guidelines in Distinguishing between Improvements and Maintenance

For tax purposes, it is important to distinguish between maintenance costs (which have a one year lifespan) and capital costs (which are depreciated over time). To that end, the IRS has prepared guidelines that distinguish between maintenance costs and capital costs.

While the IRS guidelines were not specifically referenced by the Court of Appeals in the *Munster* decision, they are useful in understanding the distinction between maintenance

costs (which again are not a permissible use of Tax Increments) and capital costs (which are more likely to constitute a permissible use of Tax Increments).

Under the IRS guidelines, replacing light bulbs in an individual light fixture would be considered maintenance, while replacing the entire lighting system is a capital cost. Likewise, replacing a section of a roof is considered maintenance, while replacing the entire roof is a capital cost.²

The Legal Department's Role in Assisting the Redevelopment Commission

The Legal Department reviews all projects before they are brought to the Redevelopment Commission and stands ready to advise on whether a project is likely to constitute a valid use of Tax Increments. This includes, where appropriate, applying the four factor test to determine whether a project is an improvement or whether it is maintenance.

If there are specific questions regarding one or more projects that are brought to you in the future, please do not hesitate to consult us.

² Depending on the particular facts of the project, it is possible that a capital cost (for tax purposes) could constitute maintenance under the four part test. The IRS guidelines are not a replacement for the four part test; instead, they are something that can be used in conjunction with the four part test.

16-03
RESOLUTION
OF THE
REDEVELOPMENT COMMISSION
OF THE
CITY OF BLOOMINGTON, INDIANA

WHEREAS, the City of Bloomington, Indiana, is eligible for Community Development Block Grant (CDBG) funds in the approximate amount of \$718,000 of grant funds for Fiscal Year 2016 and \$2,298 of reallocated funds from Fiscal Year 2015, the following allocations are recommended:

\$466,700 for Physical Improvements
\$109,998 for Social Services
\$143,600 for the Administration of the program; and

WHEREAS, the advice and input of the community as to the allocation of the Community Development Block Grant funds has been solicited and received through the efforts of the Citizens' Advisory Committee; and

WHEREAS, the Citizens' Advisory Committee has also made recommendations on how to distribute any funds received that are over or less than the estimated amount; and

WHEREAS, current information indicates the possibility of a reduction in funding beyond what could be anticipated at the time of the estimate; and

WHEREAS, the Redevelopment Commission has reviewed the recommendations of the Citizens' Advisory Committee for allocation of funds to be received;

NOW, THEREFORE, BE IT RESOLVED BY THE BLOOMINGTON REDEVELOPMENT COMMISSION THAT:

The Bloomington Redevelopment Commission hereby approves:

- 1) The Citizens' Advisory Committee's recommendations of the programs (attached hereto and made a part herein as Exhibit A and Exhibit B) that will best serve the local and national objectives of the program;

- 2) If the received allocation is more or less than expected, the adjustment will be made to all of the approved social service programs and the approved physical improvement programs in accordance with the recommendations of the Citizens' Advisory Committees as outlined in Exhibit A and Exhibit B.

BLOOMINGTON REDEVELOPMENT COMMISSION

Donald Griffin, President

ATTEST:

Sue Sgambelluri, Secretary

Date

PHYSICAL IMPROVEMENT RECOMMENDATIONS

	<u>2016 Request</u>	<u>CAC Recommendation</u>
<u>HOUSING ASSISTANCE</u>		
BHA – Interior Renovations	\$150,000.00	\$120,000.00
New Hope – Facility Improvements on W. Second Street	\$29,753.00	\$29,753.00
HAND – Home Modification for Accessible Living	\$75,000.00	\$22,500.00
<i>SUBTOTAL</i>	\$254,753.00	\$172,253.00
<u>FACILITY IMPROVEMENTS</u>		
Boys and Girls Clubs – Facility Rehabilitation at S. Lincoln Street	\$125,000.00	\$90,000.00
LifeDesigns – Facility Improvements on N. Dunn Street	\$34,000.00	\$34,000.00
Middle Way House – Facility Improvements on S. Washington Street	\$19,000.00	\$19,000.00
<i>SUBTOTAL</i>	\$178,000.00	\$143,000.00
<u>COMMUNITY-WIDE INFRASTRUCTURE PROGRAMS</u>		
COB: Planning-Transportation Department – W 17 th Sidewalks	\$55,000.00	\$55,000.00
COB: Parks and Recreation Dept. – Banneker Center Limestone Wall	\$68,000.00	\$68,000.00
COB: Housing & Neighborhood Development – Curbs and Sidewalks	\$200,000.00	\$28,447.00
<i>SUBTOTAL</i>	\$ 323,000.00	\$151,447.00
TOTAL REQUESTED ALL FUNDED PROJECTS:	\$755,753.00	\$466,700.00
TOTAL AMOUNT ALLOCATED		\$466,700.00

If the funding is greater than \$466,700 then all agencies that were NOT funded at their requested amount will receive a proportional increase until all surplus funds are appropriated or until the agency reaches its application request. If 2016 funding is less than \$466,700 then all agency allocations will be reduced proportionally across all agencies.

1. For example, if the City receives \$500,000 in 2016 CDBG for Physical Improvements then the four activities that were NOT fully funded would receive an additional \$8,325. No agency will receive more than their original requested amount.
2. For example if the City receives \$396,695 for Physical Improvement activities then each activity would receive 85% of their recommendations.

SOCIAL SERVICE RECOMMENDATIONS

	<u>2016 Request</u>	<u>CAC Recommendations</u>
<u>EMERGENCY NEEDS</u>		
Community Kitchen	\$24,999.00	\$24,999.00
Hoosier Hills Food Bank	\$24,999.00	\$24,999.00
Middle Way House Emergency Services	\$24,999.00	\$19,000.00
Mother Hubbard's Cupboard	\$24,999.00	\$19,000.00
Shalom Center	\$24,999.00	\$0.00
<i>SUBTOTAL</i>	\$124,995.00	\$87,998.00
<u>NON-EMERGENCY NEEDS</u>		
Big Brothers and Big Sisters	\$20,000.00	\$0.00
South Central Community Action Program	\$24,999.00	\$0.00
Boys & Girls Club – Crestmont Club	\$24,999.00	\$22,000.00
<i>SUBTOTAL</i>	\$69,998.00	\$22,000.00
TOTAL REQUESTED ALL FUNDED AGENCIES	\$194,993.00	\$109,998.00
TOTAL AMOUNT OF FUNDS AVAILABLE		\$109,998.00
TOTAL AMOUNT ALLOCATED		\$109,998.00

If 2016 funding is greater than \$109,998 then the overage would be proportionally distributed among the Boys and Girls Club, Mother Hubbard's Cupboard and Middle Way House. Boys and Girls Club's proportion would be 36% of the overage, Mother Hubbard's Cupboard and Middle Way House would each receive 32% of the overage. No agency shall receive more than its requested amount.

If 2016 funding is less than \$109,998 then the amounts awarded to the Boys and Girls Club, Mother Hubbard's Cupboard, and Middle Way House would be reduced proportionately, with the total reduction equal to the amount of the shortfall. The proportions are as follows: Boys and Girls Club (36%), Mother Hubbard's Cupboard (32%) and Middle Way House (32%).